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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

WAYNE LUM, an individual,

No. C 09-05828 JF

Plaintiff,

vs.

**SCITOR CORPORATION, a Delaware  
Corporation, and DOES 1-50**

## Defendants.

**DECLARATION OF DONALD FISHER IN  
SUPPORT OF DEFENDANT SCITOR  
CORPORATION'S MOTION FOR  
CHANGE OF VENUE**

28 U.S.C. § 1404(a)

Date: March 26, 2010  
Time: 9:00 a.m.  
Dept.: Courtroom 3, 5<sup>th</sup> Floor  
Judge: Hon. Jeremy Fogel

I, Donald Fisher, hereby declare and state as follows:

21       1. I am a resident of the Commonwealth of Virginia and am the current Corporate  
22 Personnel Security Manager for Scitor Corporation ("Scitor" or "the Company"). I provide this  
23 declaration in support of Scitor's Motion for Change of Venue under 28 U.S.C. § 1404(a). I have  
24 direct and personal knowledge of the facts set forth below and, if called and sworn as a witness, I  
25 would testify competently to the truth of these facts.

26       2. I have worked for Scitor since September 1995, and have served as Scitor's  
27 Corporate Personnel Security Manager since 1999. I have worked at Scitor's corporate  
28 headquarters in Herndon, Virginia throughout most of my tenure with the Company. I am

1 regularly involved with the administration of Scitor's compliance with various security clearance  
2 requirements that apply to Scitor employees under security regulations and various contracts that  
3 Scitor has with the United States government's intelligence community. My duties include  
4 acting as an interface between the U.S. government's National Reconnaissance Office ("NRO")  
5 and Scitor employees on such matters as the processing of security clearance applications, issues  
6 and questions that arise under the security clearance process, monitoring and reporting of foreign  
7 travel/foreign contact by cleared personnel pursuant to various security requirements, polygraph  
8 examination matters, and requirements for employees to renew and maintain their security  
9 clearances. I regularly receive training and review government-issued legal and other materials  
10 on these matters. I also have responsibility for other security-related matters.

11       3.      I work within Scitor's Security Department and report to Terry Wildermuth,  
12 Scitor's Director of Security. Corporate personnel within the Security Department work at  
13 Scitor's corporate headquarters in Herndon, Virginia.

14       4.      Part of Scitor's work for the U.S. government intelligence community involves the  
15 operation and maintenance of classified top secret sensitive compartmentalized information  
16 computer networks. These networks are subject to strict security requirements and directives  
17 regarding who can access the networks, proper and improper use of the networks, locations of  
18 network hardware, audits, anti-virus updates, security patches, and other aspects of the networks.  
19 I have access to one of these classified networks and am personally familiar with the security  
20 restrictions applicable to the networks. One requirement is that any employee with access to  
21 such a classified network must have a Top Secret/Sensitive Compartmentalized Information  
22 ("TS/SCI") security clearance.

23       5.      Employees who have Top Secret security clearances must renew those clearances  
24 every five years as directed by the government. For an employee holding a TS/SCI clearance,  
25 there is also a process that requires them to submit to a polygraph examination administered by a  
26 polygraph examiner employed by the NRO. I serve as the interface between the NRO and Scitor  
27 and its employees on security clearance renewals and related issues, including polygraph  
28 examinations. I use the term "interface" because the NRO has complete control over these

1 matters, including the entire polygraph examination process. Officials of the NRO, at the NRO's  
 2 headquarters in Virginia, dictate who must take the polygraph examinations, when the  
 3 examinations must be taken, the process for administering the examinations, and evaluation of  
 4 the examination results. In addition, NRO officials in Virginia have complete control over what  
 5 to do when an employee refuses to take a polygraph examination. Scitor must follow the  
 6 directives of the NRO on all matters pertaining to polygraph examinations, and we at Scitor do  
 7 not have the authority to decide when polygraph examinations will take place or who the  
 8 examiner will be. We are given direction to follow when an employee refuses to cooperate with  
 9 the polygraph examination process. For example, if an NRO official tells me that a particular  
 10 employee must take a polygraph examination at a particular time, or that an employee must  
 11 report for another examination, I relay that information to the employee and do not have the  
 12 authority to over-ride the NRO's direction.

13       6. I regularly deal with officials of the NRO on matters pertaining to polygraph  
 14 examinations, security clearances, and other security matters. The NRO officials who make  
 15 decisions pertaining to these matters as they affect Scitor employees are all located at the NRO's  
 16 Headquarters in Virginia. I deal with many of these officials on a regular basis in the course of  
 17 my work for Scitor, particularly in the NRO Polygraph Office and Personnel Security Division,  
 18 Customer Relations Branch ("PSD/CRB"). I am prohibited by security restrictions from  
 19 publicizing the names of the NRO officials with whom I deal on these matters.

20       7. Scitor employee Wayne Lum held a NRO TS/SCI clearance. In April 2009, I  
 21 received notification from the NRO Polygraph office that Mr. Lum needed to be scheduled for a  
 22 polygraph examination. I provided Mr. Lum the contact information to set up his appointment,  
 23 which he did. I was later contacted again by the NRO Polygraph Office and told that Mr. Lum  
 24 needed to schedule another appointment because the previous polygraph examination was  
 25 incomplete. After receiving this directive, I called Mr. Lum and left him a message that the  
 26 NRO was requiring him to submit to another polygraph examination. I had various contacts with  
 27 NRO personnel and Mr. Lum concerning Mr. Lum's polygraph examination. In the course of  
 28 subsequent discussions with Mr. Lum, he stated that he wanted more time before taking the

1 examination, and I explained to him that I had no control over the timing of the examination and  
2 that he needed to follow the NRO's directives relating to the examination. Mr. Lum complained  
3 about the polygrapher's conduct in the partial examination he had begun in April, and I provided  
4 him with information on how to lodge a complaint with the NRO. Mr. Lum did file such a  
5 complaint, and it was reviewed by officials at the NRO's Virginia headquarters (in the NRO  
6 Polygraph Office) who found that the complaint had no merit. I was informed of the complaint  
7 and the NRO's findings by NRO officials in Virginia and relayed their findings to Mr. Lum.  
8 NRO officials in Virginia subsequently informed me that Mr. Lum still needed to appear for a  
9 polygraph examination but that he had failed to contact the NRO to schedule the examination.

10       8.     In September 2009, I again spoke with Mr. Lum at the request of the government  
11 and told him that he needed to appear for the polygraph examination as NRO had directed and  
12 that, if he failed to do so, he could be de-briefed. "De-briefing" is the process by which Scitor  
13 carries out the NRO's directive to terminate an employee's security clearance, informs the  
14 employee of his or her continuing duties of confidentiality and secrecy, and obtains the  
15 employee's signature on various debriefing paperwork. When Mr. Lum ultimately refused to  
16 submit to a polygraph examination as the NRO had directed, NRO officials in Virginia decided  
17 that his security clearance should be revoked and directed Scitor to de-brief him. I was informed  
18 of this NRO decision by an NRO PSD/CRB official in Virginia, who told me that personnel in  
19 the NRO's Headquarters had made the decision and issued the directives as to Mr. Lum. After I  
20 received this directive from the NRO, I informed Terry Wildermuth and he handled the matter  
21 after that.

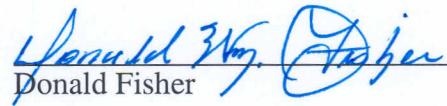
22       9.     Based on my years of experience in dealing with the NRO on security clearance  
23 and polygraph examination matters, I am aware that decisions to revoke a Scitor employee's  
24 security clearance and to order a de-briefing are made by NRO officials at the agency's  
25 headquarters located in Virginia. Further, I am aware that NRO records pertaining to such  
26 matters are maintained at the NRO's Headquarters in Virginia.

27       ///

28       ///

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Executed this 12<sup>th</sup> day of February, 2010, at Herndon, Virgina.

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5   
6 Donald Fisher

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